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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,809	05/24/2001	Gerard Jay Bellasalma	60137-026	2588

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 12/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliance With 37 CFR 1.192(c)	Application No. 09/864,809	Applicant(s) BELLASALMA ET AL.	
	Examiner David L. Sorkin	Art Unit 1723	

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 20 October 2003 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☒ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☒ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

see attached detailed explanation

NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR

1.192(c)

1. 37 CFR 1.192(c)(3) requires "A statement of the status of all the claims, pending or canceled, and identifying the claims appealed". Applicant has not complied with 37 CFR 1.192(c)(3) in the following aspects:

- a. Of paramount importance, appellant has not stated what claims are being appealed. Instead, appellant provides two overlapping sets of claims, stating one set is the claims which are "finally rejected" and the other set is the claims which are "canceled". Claims 13 and 15 appear in both sets. The term "finally rejected" is not equivalent to the term "appealed". Appellant must state what claims are being "appealed".
- b. Appellant states claims 13 and 15 are canceled, in clear contradiction to the prosecution history. While applicant proposed in an after-final amendment filed 19 May 2003 that claims 13 and 15 be canceled, the amendment was not entered, as appellant admits in the brief.
- c. Appellant has not stated what claims are "pending".

2. It is noted that Appellant has declined to contest the section 103(a) rejection of claims 8-10, 12-16, 20 and 21 as being unpatentable over Larsen (US 1,196,121).

3. Regarding 37 CFR 1.192(c)(7), the grouping of claims appellant provides is defective in the following aspects:

- a. Claim 20 appears in both group "A" and group "B".
- b. Claim 31 appears in both group "A" and group "B".

- c. Claim 11 appears in both group "A" and group "D".
 - d. Claim 6 is not in any group.
- 4. 37 CFR 1.192(c)(7) begins "For each ground of rejection which appellant contests..."; therefore, appellant should explain how any claim groupings relate to the individual issues. It is recommended that appellant provided a separate grouping statement for each issue. The current omnibus grouping statement is confusing when the claims are considered issue-by-issue.
- 5. In applicant's arguments regarding Larsen, applicant refers to the rejection of claims "1, 4, 5, 7-17, 20, 21, 26, 28, 30 and 31" as anticipated under section 102 by Larsen. However, many of these claims were not rejected on such ground. Claims 1-7 and 17-19, 26, 28, and 30-31 were rejected as anticipated under section 102 by Larsen. Several inaccurate statements regarding what claims are rejected under section 102 as anticipated by Larsen are made on pages 6-7 of the brief.
- 6. Likewise, applicant refers to claims rejected as anticipated under section 102 by Paulson, which were not actually rejected on such ground.
- 7. 37 CFR 1.192(c)(9) requires an "appendix containing a copy of the claims involved in the appeal". While appellant has not stated what claims are being appealed, as discussed above, the appendix omits claims 13 and 15. Appellant must include these claims in the appendix or clearly state that these claims are not being appealed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin



CHARLES E. COOLEY
PRIMARY EXAMINER